

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARISSA and JOSE BENAVIDES,
Individually, and as Representatives of
the Estate of A.B. Deceased,

Plaintiffs,

V.

RICHARD J. GUAJARDO, M.D. and
CHRISTUS SPOHN HEALTH SYSTEM
CORPORATION d/b/a
CHRISTUS SPOHN ALICE
ROLAND R. GARZA.

Defendants.

CIVIL ACTION NO.

15-CV-263

NOTICE OF REMOVAL

The United States of America, through the undersigned Assistant U.S. Attorney, and on behalf of federal employee Richard J. Guajardo, M.D., files this Notice of Removal upon showing:

1.

This matter involves a civil action for negligence against federal employee, Richard J. Guajardo, M.D., who was at all times acting the scope of his duties with the Community Action Corporation of South Texas, a federally supported health care facility which receives grant money from the United States Public Health Service pursuant to 42 U.S.C. 256. The Bureau of Primary Health Care (BPHC), in accordance with Section 224(h) of the Public Health Service (PHS) Act, 42 U.S.C. § 233(h), as amended by the Federally Supported Health Centers Assistance Act of 1995 (“FSHCAA”)(Pub. L. 104-73), has “deemed” the Community Action

Corporation of South Texas, and its employees, including Richard J. Guajardo, M.D., as employees of the Federal Government, effective January 1, 2010, and that its coverage has continued without interruption since that time for purposes of Section 224. Section 224(a) provides liability protection under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), 2671 *et seq.*, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, and related functions and is exclusive of any other civil action or proceeding.

2.

Because plaintiff's civil action was commenced in State court against a federal employee acting within the scope of his duties with a federally supported health care facility, this action is properly removed under 28 U.S.C. §§ 1442(a), the Federal Tort Claims Act, 28 U.S.C. § 2679(d)(2), and pursuant to the Federally Supported Health Care Assistance Act, 42 U.S.C. § 233.

WHEREFORE, this civil action is properly and timely removed by the United States of American on behalf of its employee, defendant Richard J. Guajardo, M.D.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing pleading was electronically served through the court's electronic filing system, or by U.S. Mail postage prepaid, on this 12th day of June 2015, to the following counsel of record:

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